

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DATE FILED: 11/30/2016

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

KEVIN JOHNSON,

Defendant.
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15-CR-565 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS, on July 18, 2016, the Court filed a Protective Order Regarding the Confidentiality of the Forensic Statistical Tool Source Code and Related Documents [Dkt. 69];

WHEREAS the July 18 Protective Order defines “Highly Confidential Material” as “the New York City Office of the Chief Medical Examiner’s Forensic Statistical Tool (“FST”) source code or portions thereof produced by a party pursuant to a subpoena in this action”;

WHEREAS, on November 21, 2016, Defendant submitted to the Court proposed redactions to Defendant’s *Daubert* brief, which Defendant submitted under seal on November 15, 2016;

WHEREAS the Government and the Office of the Chief Medical Examiner have agreed to Defendant’s proposed redactions; and

WHEREAS the Court has reviewed the proposed redactions;

IT IS HEREBY ORDERED that, on or before **December 5, 2016**, the parties must submit a joint letter to the Court explaining why:

1. The following redaction is appropriate in light of the presumption of access discussed by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006):
 - a. Except for the first page of the affidavit, the full text of Exhibit C – Nathaniel Adams’ affidavit and appendices, which seems to the Court to contain large portions of discussion that do not cite the FST source code.
2. Additional portions of Section X of the brief (pp. 44–47), which appears to discuss a statistical function that purportedly is part of the FST source code, do not fall within the scope of the July 18 Protective Order.

IT IS FURTHER ORDERED that, on or before **December 2, 2016**, Defendant must file an unredacted copy of the November 15 *Daubert* brief with the Southern District of New York Sealed Records Department, and Defendant must file a copy of its November 21, 2016, letter on ECF.

SO ORDERED.

Date: November 30, 2016
New York, New York



VALERIE CAPRONI
United States District Judge